

DRAFT BRIEFING FOR DAN

TRIBAL CONSULTATION AND REVIEW UPDATE FOR DESCHUTES TOTAL MAXIMUM DAILY LOAD (TMDL), THURSTON COUNTY, WASHINGTON

Meeting Purpose

Provide background information and update Dan on the following:

- Status of EPA TMDL Review;
- Squaxin Island Tribe TMDL Concerns; and
- Options for Moving Forward

Project Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi²) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. Significant data collection to support the Phase 1 TMDL began in 2003. Data analysis and modeling concluded in 2012. On December 17, 2015, Ecology submitted the final Phase 1 TMDL to EPA for approval. The submitted TMDL package includes a request that EPA approve allocations for 71 Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment). EPA understands that Ecology is developing a TMDL for Budd Inlet and Capitol Lake as Phase 2 of the Deschutes TMDL. According to the timeline shared with EPA in March 2016, Ecology is tentatively planning to submit the Phase 2 TMDL for approval in June 2019.

(b) (5)

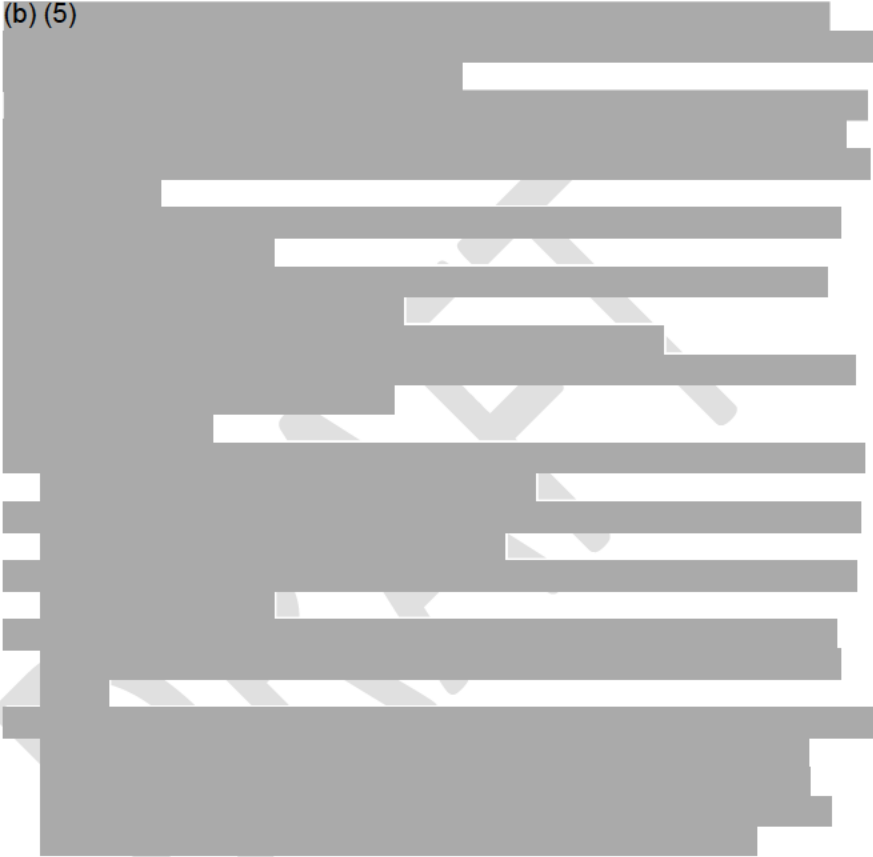


Quick Facts

- ✓ Ecology is seeking approval for TMDLs that span 71 segments
- ✓ Category 5 impairments: water temperature, DO, pH, fecal coliform bacteria, and fine sediment
- ✓ Category 4C pollution: in-stream flows and large woody debris
- ✓ TMDL split into two phases given technical complexity and political ramifications related to Capitol Lake and Budd Inlet impairments
- ✓ Surrogates are proposed for 4 of 5 pollutants
- ✓ The TMDL seeks to achieve temperature, DO, and pH water quality standards through increased stream shading
- ✓ Ecology predicts that WQS for temperature, DO, and pH will be achieved by 2065.

✓ Permittees include: 5 municipal stormwater-[MS4s](#), 7 sand & gravel, 9 industrial stormwater, and 25+ construction stormwater. The boundary of the Phase 1 TMDL does not include wastewater treatment point sources. Phase 2 of the TMDL will include the LOTT regional wastewater facility that serves south Puget Sound.

✓ (b) (5)



Status of Phase 1 TMDL Review

(b) (5)



(b) (5)



Squaxin Island Tribe Concerns

(b) (5)



requested the following agenda items be including during our consultation meeting scheduled for June 30th, 2016:

“ **River Flow**

- Decreasing flows of the Deschutes River
- River flow in the Ecology’s Deschutes River temperature modeling

(b) [REDACTED]
b [REDACTED]
• Actions to be taken.

Riparian Shade

(b) [REDACTED]
b [REDACTED]
• Scale of the Deschutes River (flow, channel, and valley) relative to a 75 ft riparian buffer.
• Large woody debris as target allocations.
• Actions to be taken.

(b) (5) [REDACTED] crucial, given that likelihood of full riparian shade restoration is low,
(b) (5) [REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED] In addition, SIT included the following in their

public notice comments:

“The Clean Water Act does not allow Ecology to draw a bright line between its water quality and quantity programs. Rather, the Act requires “comprehensive solutions” to prevent, reduce and eliminate pollution in concert with programs for managing water, and (2) establishes the supreme goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation’s waters. Drawing a bright line is a prohibited “artificial distinction.” PUD No. 1 v. Ecology, 511 U.S. 700, 719 (1994).”

(b) (5) [REDACTED]
[REDACTED]

Options for Moving Forward

(b) (5)

In review of *Potential for Escalation* presented above, approving the TMDL as submitted represents litigation risk by SIT, NWEA, or both. In addition, postponing approval may also induce litigation as we have not acted within our required 30 day approval timeframe. It is not clear we have legal rationale for disapproving the Phase 1 TMDL. However, it is clear that numerous weaknesses recognized by EPA, SIT, and NWEA warrant revising the TMDL. A revision that shows some promise is an expanded streamflow and urbanization analysis (see Newaukum Creek TMDL, 2011). Such an analysis could be used by SIT as basis for requesting that Ecology conduct an in-stream flow study for the Deschutes River.

Following a legal determination of approvability, we recommend that EPA schedule a meeting with Ecology to identify ways to revise the TMDL. Such a meeting should be informed by detailed understanding of SIT and NWEA positions (if possible).

Options for moving forward include ALL DRAFT BELOW HERE

(b) (5)

Commented [CD1]: I would maybe flip this around to say something to the effect of..."creating a legal rationale for disapproving the Phase I TMDL would require more refined analysis of the TMDL and ORC support"

(b) (5)

Let's be prepared to explain the 4c situation for flow and woody debris and the idea that Ecology could take non-CWA steps to help address these problems in the TMDL.